

invention." Office Action mailed July 2, 2002 (Paper Number 5), at page 2. In the Applicants' Response to Election Requirement mailed October 31, 2002 (Paper Number 7) the Applicants stated that:

"Applicants respectfully draw the Examiner's attention to the fact that claims 1 through 4 are directed to a nucleic acid molecule having a nucleic acid sequence selected from the group consisting of SEQ ID NO: 1 through SEQ ID NO: 52202 or complements thereof. Claims 5 through 7 are directed to a nucleic acid molecule encoding a protein or fragment thereof selected from the group consisting of a rice protein or fragment thereof from Table 1. Applicants therefore draw the Examiner's attention, with respect to claims 5 through 7, to the fact that in Table 1, SEQ ID NO: 7212 includes a probable gibberellin C-20 oxidase. *See* Table 1, SEQ ID NO: 7212, molecule corresponding to a gene from *Oryza saliva*."

In the Office Action mailed December 31, 2002 (Paper Number 8) the Examiner indicated that the reply filed October 31, 2002 (Paper Number 7) was deemed not fully responsive to the prior Office Action. In the Office Action mailed December 31, 2002 (Paper Number 8) the Examiner stated that:

"...an inspection of Table 1 indicates that the approximately 69kb nucleic acid of SEQ ID NO: 7212 includes several possible open reading frames encoding a variety of distinct proteins, of which the possible gibberellin C-20 oxidase is only one. It is not clear from Applicants' response as to whether Applicant wishes to elect SEQ ID NO: 7212 (i.e., a molecule encoding several distinct proteins) or whether Applicant wishes to elect nucleic acids encoding a particular protein of Table 1 (nucleic acids encoding gibberellin C-20 oxidase)."

Applicants respectfully note that the Examiner has never established any grounds for a restriction of the claims. Thus the Applicants' respectfully submit that the election of the single SEQ ID NO: 7212 including the portion of the sequence that encodes the possible gibberellin C-20 oxidase is sufficient.

The Examiner asserts that the "molecules encompassed by the instant claims are patentably distinct by virtue of having different structures and encoding proteins having

different functions." Office Action mailed July 2, 2002 (Paper Number 5), at page 2. However, Applicants submit that election of a single nucleotide sequence is improper and Applicants believe no serious burden would result by the search and examination of at least ten nucleotide sequences. The election of a single nucleic acid sequence contravenes the USPTO policy as set forth in the Manual of Patent Examining Procedure stating that "to further aid the biotechnology industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided ... to permit a reasonable number of such nucleotide sequences to be claimed in a single application." (MPEP, 8th ed., August 2001, Section 803.04). The MPEP further provides that "[i]t has been determined that normally ten sequences constitute a reasonable number for examination purposes." (emphasis added) *Id.* While the Examiner requires that a single nucleotide sequence be selected, no reason has been provided for this deviation from articulated Patent Office policy.

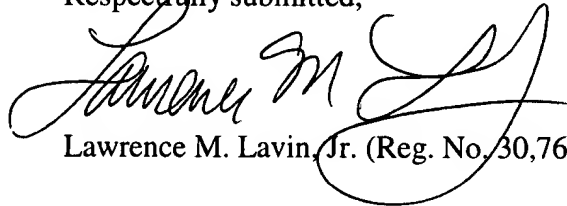
Based upon the foregoing, Applicants submit that the election requirement is improper and therefore must be withdrawn. To facilitate prosecution, however, Applicants have provisionally elected, with traverse, the single SEQ ID NO: 7212 including the portion of the sequence that encodes the possible gibberellin C-20 oxidase.

The Examiner is respectfully requested to withdraw the outstanding election requirement. Should the Examiner have any questions regarding this application, the Examiner is encouraged to contact Applicants' undersigned representative at (314) 694-3602.

In the event that extensions of time beyond those petitioned for herewith are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned. Applicants do not believe any additional fees are due in conjunction with this filing.

However, if any fees under 37 C. F. R. 1.16 or 1.17 are required in the present application, including any fees for extensions of time, then the Commissioner is hereby authorized to charge such fees to Deposit Account No. 13-4125, referencing matter number 38-21(51237)F/16517.114.

Respectfully submitted,



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